

STATE OF MICHIGAN
COURT OF APPEALS

KIRK HANNING,

Plaintiff-Appellant,

v

MARTY MILES COLLEY and DUMITRU
JITIANU,

Defendants-Appellees.

UNPUBLISHED

May 20, 2008

No. 278402

Oakland Circuit Court

LC No. 2006-076903-NF

Before: White, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Plaintiff Kirk Hanning appeals as of right the trial court's order dismissing this case for failure to file an amended complaint within the time specified by the court. Because we conclude that the trial court erred when it dismissed Hanning's suit with prejudice, we reverse and remand for further proceedings. This case is being decided without oral argument under MCR 7.214(E).

I. Facts and Procedural History

In January 2004, defendant Marty Colley struck the rear end of Hanning's car. At the time of the accident, Colley was driving a car owned by defendant Dumitru Jitianu. In August 2006, Hanning sued Colley and Jitianu for injuries that he sustained in the accident. Hanning's complaint alleged that Colley was liable for damages caused by his negligent operation of the car and that Jitianu was liable based on his ownership of the car. See MCL 257.401(1). Hanning alleged that he suffered certain specific injuries—including injuries to his back and neck—but also asked for other damages “to the extent that the damages are recoverable under the Michigan No-Fault Insurance Act.” Furthermore, Hanning alleged that his injuries constituted a “serious impairment of an important body function” within the meaning of MCL 500.3135(7).

In March 2007, defendants moved for summary disposition under MCL 2.116(C)(10). Defendants argued that Hanning did not suffer a serious impairment of body function and, therefore, did not meet the threshold for noneconomic damages under Michigan's no-fault laws. See MCL 500.3135(1). In response to defendants' motion, Hanning argued that his injuries met the serious impairment threshold. In addition, Hanning argued that, even if the court were to conclude that his injuries did not meet the threshold, he was still entitled to recover excess

economic damages under MCL 500.3135(3)(c). For that reason, Hanning further argued, summary disposition of his entire claim would be inappropriate.

In its opinion and order, the trial court concluded that Hanning's injuries did not meet the serious impairment threshold. For that reason, it concluded that Hanning was not entitled to noneconomic damages. In addition, the trial court rejected Hanning's argument that he could still recover excess economic damages under MCL 500.3135(3)(c). The trial court explained that Hanning's "claim that an individual is allowed to bring suit . . . for excess economic damages without meeting any threshold . . . is insufficient" Further, the court noted that the "argument goes well beyond the scope of [defendants'] motion" and was so cursory that it should be "deemed abandoned." Nevertheless, the trial court gave Hanning 14 days to move for amendment under MCR 2.118(A)(2).

Shortly after the court entered its opinion and order, Hanning moved for permission to amend his complaint to include a claim for excess economic damages. At a hearing held on May 16, 2007, the trial court indicated that Hanning knew or should have known about the claim for economic damages when he filed his original complaint and stated that amendment of the complaint now would prejudice defendants. Further, the court indicated that Hanning was engaged in dilatory tactics. Notwithstanding this, the trial court gave Hanning one week to amend his complaint, but conditioned the court's approval on Hanning's agreement "to pay every red cent" of defendants' attorney fees "from this moment on."

After Hanning failed to file an amended complaint within the week time limit, the trial court dismissed Hanning's case with prejudice.

This appeal followed.

II. Analysis

On appeal, Hanning argues that his original complaint adequately alleged a cause of action for negligence with both economic and noneconomic damages. Based on this, Hanning argues that the trial court should not have required him to amend his complaint to state a claim for economic damages. We agree.

This Court reviews questions of law de novo. *Borowsky v Borowsky*, 273 Mich App 666, 672; 733 NW2d 71 (2007). This Court also reviews a trial court's decision on a motion for summary disposition de novo. *State Farm Fire & Casualty Co v Corby Energy Services, Inc*, 271 Mich App 480, 482; 722 NW2d 906 (2006). Finally, this Court reviews a trial court's discretionary decisions for abuse. *Borowsky, supra* at 672. A court abuses its discretion when it selects an outcome that is not within the range of reasonable and principled outcomes. *Id.*

Under Michigan's fact-based pleading system, a complaint is sufficient if it contains a "statement of the facts . . . on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend." MCR 2.111(B)(1); see also *Iron Co v Sundberg, Carlson & Associates, Inc*, 222 Mich App 120, 124; 564 NW2d 78 (1997). It is clear that Hanning's complaint adequately alleged each of the elements of an ordinary negligence action based on Colley's driving and Jitianu's ownership of the car driven by Colley. See *Case v*

Consumers Power Co, 463 Mich 1, 6; 615 NW2d 17 (2000) (noting the elements of a negligence action); MCL 257.401(1). Further, although our Legislature has abolished tort liability “arising from the ownership, maintenance, or use . . . of a motor vehicle” except as to certain enumerated areas, see MCL 500.3135(3),¹ it has not elected to impose heightened pleading requirements for actions involving motor vehicles. Indeed, Hanning did not even have to cite the statutory provisions authorizing his claim. See *Rymal v Baergen*, 262 Mich App 274, 301 n 6; 686 NW2d 241 (2004). Nevertheless, where a plaintiff fails to allege facts that establish the right to maintain an action premised on the negligent operation of a motor vehicle—such as a threshold injury or the existence of excess economic damages, it may be appropriate for a trial court to grant summary disposition under MCR 2.116(C)(8). But this is not such a case. Hanning clearly alleged that his injuries constituted a serious impairment of body function and further placed defendants on notice that he was asking the court to award “[o]ther damages” to the extent recoverable under the no-fault laws. Although Hanning’s complaint might have been more precisely stated, it adequately alleged a cause of action premised on the negligent operation of a motor vehicle and placed defendants on notice that they may be held liable for both the noneconomic damages permitted under MCL 500.3135(1) and the excess economic damages permitted by MCL 500.3135(3)(c).

Because the trial court’s decisions concerning Hanning’s need to amend his complaint were based on its erroneous belief that Hanning’s original complaint did not adequately allege excess economic damages under MCL 500.3135(3)(c), we conclude that the trial court abused its discretion when it required Hanning to seek leave to amend and then later permitted amendment only on condition that Hanning be liable for defendants’ attorney fees. See *Bynum v ESAB Group, Inc*, 467 Mich 280, 283; 651 NW2d 383 (2002) (noting that “[w]here the trial court misapprehends the law to be applied, an abuse of discretion occurs.”). Therefore, we vacate the trial court’s orders of May 16 and May 24, 2007. Moreover, although Hanning has not directly challenged the trial court’s grant of summary disposition in favor of defendants, under our authority to “grant further or different relief as the case may require,” see MCR 7.216(A)(7), we conclude that this error also necessitates partial reversal of the trial court’s grant of summary disposition in favor of defendants.

Defendants moved for summary disposition of Hanning’s claims on the ground that he failed to establish that he suffered a serious impairment of body function. See MCL 500.3135(1). In support of this motion, defendants presented evidence that Hanning’s injuries did not affect his general ability to lead his normal life. See MCL 500.3135(7). But they did not challenge Hanning’s claim for “other damages” permitted under the no-fault laws or otherwise present any evidence that Hanning was not entitled to excess economic damages. See MCL 500.3135(3)(c). Nevertheless, the trial court determined that summary disposition of Hanning’s entire cause of action was warranted.

¹ We note that the provisions of MCL 500.3135(3)(a) through (d) are not causes of action that must be separately pleaded. Rather, they are exceptions to the abolition of tort liability premised on the ownership, maintenance or use of a motor vehicle codified at MCL 500.3135(3). Hence, where an exception applies, the underlying cause of action will remain either an intentional tort—such as battery or trespass—or a tort based on ordinary negligence.

As Hanning pointed out to the trial court, even if the trial court agreed with defendants' contention that Hanning had not suffered a threshold injury, defendants would only be entitled to partial summary disposition of Hanning's claim.² A plaintiff is not required to prove a threshold injury in order to recover excess economic damages. *Ouellette v Kenealy*, 424 Mich 83, 85-86; 378 NW2d 470 (1985). Because Hanning's complaint clearly encompassed both the noneconomic and excess economic damages proximately caused by Colley's negligence, the trial court could not grant summary disposition of his entire complaint on the basis of a failure to establish a threshold injury alone. See MCL 500.3135(1) (stating that the threshold applies only to noneconomic damages). Instead, the trial court should have granted summary disposition in defendants' favor to the extent that Hanning sought noneconomic damages and permitted Hanning to proceed with his claim to the extent that it was based on the excess economic damages permitted by MCL 500.3135(3)(c). See MCR 2.116(C)(10).

III. Conclusion

For the reasons stated, we vacate the trial court's orders of May 16 and May 24, 2007. In addition, we reverse the trial court's grant of summary disposition in favor of defendants to the extent that the grant precluded Hanning from pursuing excess economic damages as permitted by MCL 500.3135(3)(c), and remand this matter for further proceedings consistent with this opinion.³ We do not retain jurisdiction.

/s/ Michael R. Smolenski

² Because defendants motion did not establish a basis for granting summary disposition of Hanning's entire claim, we cannot agree with the trial court's conclusion that Hanning abandoned this aspect of his claim for failing to more thoroughly brief it in response to defendants' motion. Instead, the initial burden was on defendants to show that they were entitled to summary disposition of Hanning's entire claim, see *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), which they did not do. Hence, the burden never shifted to Hanning to demonstrate that there was an issue of fact on the existence of excess economic damages. *Id.*

³ Hanning has not challenged the trial court's determination that he failed to establish a threshold injury under MCL 500.3135(1). Therefore, we express no opinion as to the propriety of that determination. Further, nothing in this opinion should be read to preclude defendants from moving for summary disposition on the basis that Hanning has not suffered the type of damages permitted by MCL 500.3135(3)(c). See, e.g., *Ouellette, supra* at 87-88 (holding that excess economic damages are limited to those types of damages permitted by MCL 500.3107, which do not include loss of earning capacity).